

**Refuge Water Supply Contract [MOU]
Negotiation Session, Sacramento, CA
July 12, 2000**

Summary of Meeting

Participants: Felix Arteaga [California Department of Fish & Game (CDFG)], Nancee Murray (Attorney, CDFG), Joel Miller (USFWS), Daniel Cardozo & Don Marciochi [Grassland Water District (GWD)], Matt Franck (CH2M Hill), Stan Yarbrough & Chuck Marshall (USBR-Sacramento), Jim Turner (Office of the Solicitor), Buddy Smith (USBR-Tracy), Sheryl Carter & Barbara Hidelburg (USBR-Fresno),

Public: Robert Stackhouse (Central Valley Project Water Users Association), Amelia Minaberrigarai (Westlands Water District)

The session began at 10:00 a.m.

Stan Yarbrough asked all attendees to please sign the sign-in sheet. He then reviewed the Role of the Public during the negotiation session and mentioned the public would be provided the opportunity to comment at the end of the session.

Stan discussed an approach to take a step back and talk about contract concepts before moving to the basic contract language. He stated some of Reclamation's areas of concern:

- C Availability of Water
- C Point of Delivery
- C Accounting and use of Non-Project Water (Water Rights Water as compared to Project Water.)
- C Quantity and basis of Level 2 Water (1989 Report requires Reclamation to provide full level 2 quantity from resources verses supplementing existing sources of water.)
- C Points of Diversion verses Points of Delivery (What are the points?)
- C Incremental Level 4 Quantity, Water Quality (What the project is able to provide? (Who determines suitability to meet Level 4?)
- C Future Acquisition (Would it effect quantity of water to be delivered?)
- C Water Conservation (Conforming to what Reclamation require for other water service contractors.)

Felix Arteaga: Said, there is a difference between Refuges that are there for longer than 25 years and other contractors.

Buddy Smith: Stated that Reclamation do not want to commit to future contracts without the ability of revisiting it. Reclamation wants to be able to assess contracts at 25 year periods. He further stated that the Washington Office (WO) is clear in not wanting perpetuity or long-term commitments within contracts.

Nancee Murray: Asked if the 25 year concept is a written policy and if there has been any extenuating circumstances?

Stan Yarbrough: Answered, it is what was provided to Mid-Pacific Region from WO.

Daniel Cardozo: Said, the contractors intent did not change the fundamental

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rationale. However, the contractors do want to ensure the contract is consistent with Central Valley Project Improvement Act (CVPIA). He further said, the contractors were uncertain about certain assumptions of Reclamation in the initial draft contract. CVPIA includes clear legal directives that are further explained in the CVPIA Administrative Proposal. The contractors intended for the contract to reflect overall legal affects of CVPIA. He said, there is a fundamental problem with comparing Refuges Water Supply contracts to Agriculture Water Service contracts. There are a number of places where Reclamation placed specific language from Agriculture Water Service contracts into the Refuges Water Supply contract. He said, CVPIA creates certain preferences for Refuges, i.e. Shortage Provision - operational shortages do not apply to Refuges. Time of Delivery of water. He said, when looking at specific legal directives for contract basis, Reclamation's model should be the Exchange Contractors' contract.

Joel Miller: Expressed that Fish and Wildlife Service (F&WS) has concerns with exhibit A.

Stan Yarborough: Stated that CVPIA 3404 (c) addresses renewal of existing long-term contracts for 25 years and that Reclamation's position is that 25 year term limitation is universal.

Jim Turner: Said, CVPIA applies on to the CVP.

Daniel Cardozo: Said, the 3404 (c) limits 25 year term to long-term contract renewal only. He also said that it does not relate to Refuges and that there are no limits provided within CVPIA. He further said, GWD has an existing contract with no termination date (in perpetuity).

Jim Turner: Agrees that by law CVPIA replies to renewals. However, Commissioner issued contracts policy for new, amended, or renewed.

Stan Yarborough: Opened discussion about Water Service Contract verses Water Supply Contract.

Daniel Cardozo: Said, Refuges contract is a new form of contract.

Jim Turner: Responded, No. Reclamation has forms of contracts. But, this is the first time providing water service to Refuges under specific directives.

Daniel Cardozo: Said, the term Water Service introduces ambiguities because, CVPIA refers to Water Supply.

Felix Arteaga: Said, DFG does not want to be placed into a category of Water Service, which is a 9 (e) contract.

Discussion commenced on the "draft" contract that the contractors provided to Reclamation prior to negotiations.

1. Title: **All** agree to change title to Project Water Supply verses Project Water Service.

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2. Preamble: **All** agree to delete redlined language: ". . . and other applicable Federal and California State Laws, and Reclamation policies and procedures. . ."
3. Recital #1: **Reclamation** is in agreement with contractors' proposed changes providing the following language is deleted: ". . . the mitigation, protection and enhancement of impacts of the Central Valley Project on fish, wildlife and associated habitats. . .". **DF&G** agree however, **GWD** is probable okay with deletion but, will need to consult about issue.
4. Recitals #2 - #9: **Reclamation** suggested deleting Recitals because, they are not essential to this contract [MOU]. **GWD** agree that not all Recitals are essential but, would like for contractors to talk and consider editing and/or condensing the background/historic information instead of deleting in entirety. **All** agree to strategy.
5. Recitals #10 & #11: **All** agree to combine the two Recitals into one, with the following 4 changes:
 - a. Move the statement from Recital # 11 ". . . through long-term contractual agreements with appropriate parties . . ." to the first sentence of Recital #10 after the word "quality".
 - b. Add the word "certain" in between the terms improve wetland i.e. improve certain wetland.
 - c. Delete the word "on" and add the word "in", i.e. habitat areas in the Central Valley.
 - d. Delete the word "Refuges."
6. Recital # 13: **All** agree to:
 - a. Delete the terms "United States" and add the terms "Contracting Officer."
 - b. Make the term "facilities" lower case.
 - c. Add the word "the" between the statement "improve Refuges" i.e. improve the Refuges.
 - i. Delete the statement ". . . wetland habitat areas on the Central Valley . . ."
 - ii. Capitalize the term "Refuges".
 - d. Recital #14: **All** agree to delete the terms "United States" and reinsert the terms "Contracting Officer." **Contractors** agree to think about the language "capable to utilize" verses "fully utilized."
 - e. Recital #15: **Reclamation** agree to go back to initial language "provides" for **GWD** only, which is pursuant to existing law.
 - i. **DF&G and F&WS** both agree to the term "allows".
 - ii. delete the word "shall" and add the word "provided" i.e. " . . . Section 3406(d)(1) to be provided at no cost to the Contractor. . ."
 - f. Recital #16 & #17: **All** agree to delete.

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- g. Recital #18: **All** agree to redlined changes, i.e
- i. Delete the statement "enter into a water service."
 - ii. (There was no actual discussion to delete the terms "United States" however, it was a universal agreement previously in the contract.) Add the terms "execute this" i.e. "Whereas the Contracting Officer is willing to execute this Contract [MOU] . . ."
7. Definition #1(c): **All** agree to delete definition for Contracting Officer and keep definition #1(q) for "Secretary" or "Contracting Officer."
8. Definition #1(d)(1): **All** agree to February 20 verses February 15.
9. Definition #1(d)(2): **All** agree to:
- a. Delete the terms "future development" and add the terms "major construction", i.e. ". . .In the event that major construction above Shasta Lake . . ."
 - b. **All** agree to insert the following statement at the end of the paragraph: "Same forecast used by the United States for the operation of the project shall be used to make forecast hereafter."
10. Definition #1(e): **All** agree to capitalize and make plural the defined term "Refuges" and delete the term "area."
11. Definition #1(f): Contractors need to discuss "made available" verses "delivered."
12. Definition #1(g): **All** agree to following language: "Hydrologic Circumstances" shall mean the conditions described in Article 1(c).
13. Definition #1(h): **All** agree to add the following language at the end of the statement: "as specified in exhibit A."
14. Definition #1(i): Reclamation to work on specific language.
15. Definition #1(j): Reclamation to provide language.
16. Definition #1(k): **All** agree to delete the following statement: "State Water Project facilities or any."
17. Definition #1(l): **All** agree to delete "any existing firm and dependable."
- a. Delete the word "supplies" and add "acquired."
 - b. Reinsert the terms "or water rights."
 - c. Delete the terms "of suitable quality."
 - d. Reinsert terms " appropriated by, transferred to or assigned."
 - e. Delete the term "available."

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- i. **DFG & F&WS** both agree to end definition article after the term "Exhibit A."
 - ii. **GWD** agree that the second portion of the definition article as modified apply to them solely, with the following changes: delete last three terms at end of statement i.e. "wetland habitat areas" and add "Refuges."
18. Definition #1(m): **All** agree to add the following statement after the term "locations(s)": "mutually agreed to by the parties."
- a. Reinsert the terms "Water Supplies."
 - b. Add the terms "to be" after "are" and delete remaining terms. New definition is as follows: "Point(s) of Delivery" shall mean the location(s) mutually agreed to by the parties at which Level 2 Water Supplies and Incremental Level 4 Water Supplies are to be delivered to the Refuge boundary(s).
19. Definition #1(n): **All** agree to delete terms "United States" and add "Secretary."
- a. Add the terms "Central Valley" after "authorizing the."
 - b. Delete the terms "permits and licenses," "by and/or issued to the United States," and "(State)."
20. Definition #1(o): **All** agree to make plural the terms "Refuge(s)," "unit(s)," and "land(s)." Add the word "the" between "mean unit(s)," i.e. "Refuge(s) shall mean the unit(s) . . ."
21. Definition #1(p): **All** agree to add this new article.
22. Definition #1(q): **All** agree to definition and changing the terms "Calender Year" to lower case "calender year."
23. Article #2: Contractors to consider "25 year contract term" verses "in perpetuity."
24. **Article #3(b)**: **GWD** to look at proposed changes.
- a. Article #3(b): Reclamation to look at both this paragraph(b) and the below striked paragraph (b) relative to Exhibit B.
 - b. Article #3(c): **All** agree to capitalize the two terms "Refuges"
 - c. Article #3(d): **All** agree that article to be consistent with Article 17. Delete the statement "wetland and wildlife habitat" and insert the word "Refuge." (Reclamation explained that the terms "reasonable and beneficial" are under review by the Washington Office Solicitor.)
 - d. Article #3(e): **All** agree to delete the term "Project" and insert "such." Also make the following changes in two places with the article.

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- i. Add the terms "water supplies" between the terms "Level 2 and."
 - ii. Insert the word "Incremental" between the terms "and Level 4." i.e. "Level 2 water supplies and Incremental Level 4."
 - iii. **Reclamation** agree to look at rewording the priority for rescheduling language and the cost issue.
25. Article #4: **Reclamation** to look at and consider entire article relative to Article 9, shortages. (some minor editorial changes were agreed, i.e. change date from 15 to 20, calendar year in lower case, etc.)
26. Article #5 (a-c): **All** agree as is with exception of deleting last sentence in article (a) because, it is addressed in the definitions.
27. Article #6: **Reclamation** to look at article. DF&G wants the ability to pool.
28. Article #7(a): **All** agree to delete statement in first sentence "water years that are determined not to be."
- a. Change the term "critically" to "non-critically."
 - b. Capitalize the term "Refuge."
 - c. **All** agree to sub-article (b).
29. Article #8(a): **All** agree to delete the terms "its best efforts" and to reinsert "reasonable efforts."
- a. Article #8(b):
 - i. Reinsert the terms "and/or Non-Project" and "except in."
 - ii. Delete the duplicate word "In."
 - iii. Add the words "in which" after the word "possible," i.e. ". . . advance notice is possible in which the Contracting Officer . . ."
 - b. Article #8(c): Capitalize the term "Boundaries" in two instances.
 - c. Article #8(d): **Reclamation** to look at article. Add the statement "make all reasonable efforts" after "United States will."
30. Article #9(a): **All** agree to deleted article and renumbering the current item (b) to (a) with the following changes:
- a. Delete the term "deliveries" and add the words "the availability."
 - b. Delete the term "delivered" and reinsert the terms "made available."
 - i. Article #9(b): Delete the term "delivered" and reinsert the terms "made available." In addition, relocate the term "Level 4" after "Incremental" and add the term "water" after

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the word "Incremental." i.e. ". . . in the Incremental
Level 4 Water Supplies. . ."

31. Article #10: **All** agree to proposed article.
32. Article #11: **All** agree to proposed article.
33. Article #12 (a & b): **Reclamation** to work on language.
 - a. GWD said the first part of the article was extracted directly from the ACT and the second part is from the conveyance agreements.
 - b. Buddy Smith explained that there is nothing Reclamation can do regarding water quality once it is pumped.
34. Deleted Article #12: **Both Reclamation & Contractors** to reconsider article.
35. Article #13: **All** agree to delete the statement "or other facilities that are not a part of the Central Valley Project."
36. Article #14 - 16: Standard Articles.
37. Article #17: **Reclamation** to consider sub-articles (a-d).
38. Article #18: **Reclamation** to consider along with the deleted Article 12.
39. Article #19 - 21: Standard Articles. 21 (a) **All** okay.
40. Article #22: **Contractors** still reviewing language.
41. Article #23: Standard Article.
42. Deleted Article #23: **Reclamation** to consider whether or not Article can be removed.
43. Article #24 & 25: Standard Articles.

Mr. Yarborough closed the negotiations at 5:00 p.m., then he opened the floor for public comment to the one public representative.

Mr. Robert Stackhouse, Centrally Valley Project Water Users Authority, commented:

- C The Refuge water needs to be put to beneficial use.
- C The Authority has requested that a water needs analysis to be completed. Questioned the decreased water deliveries in other water year types verses in only the critically dry water years.
- C Said the Long-Term Renewal Contractors rescheduling provisions are being consider for exclusion where the current practice is on an annual basis.
- C Neither the firm water supply nor the rescheduling provision in the Refuge Water Supply Contracts are in the Central Valley Project Improvement Act.

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- C Mentioned issues about the San Luis Reservoir north of the Delta.
- C Said, rescheduling avoids pre-irrigation in drainage areas.
- C Expressed concerns about M&I added at lower priority than irrigation, while Refuge has same priority as irrigation.
- C Asked if rescheduling would be considered in shortage provisions.
- C Said, the "no-cost" to the Refuge Water Supply Contractors is actually a cost to the CVP contractors, therefore, it is not at "no-cost."

- C Asked about Article 7(a) relative to other environmental uses?
- C Said relative to Article 8(d), Return Flows, Water Quality, & Drainage issues for the Refuges should have same provisions for drainage as other contractors.
- C Said, the Authority wants to know how Reclamation will deal with Article 12, Water Quality and the history of not guaranteeing water quality.
- C Said, ICP did not include provisions for Existing or Acquired Water.

Negotiation session closed at 5:11 p.m.

Next sessions tentatively scheduled for July 21 and August 9 or 10 @ 10:00 a.m. in Sacramento at either the Federal Building or at the Exposition Inn on Howe Avenue.

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Action Items

Reclamation

1. Provide the Contracting Policy regarding 25 year term to Contractors.
Chuck Marshall did so immediately after lunch prior to the afternoon session.
2. See Reclamation obligations from above.

California Department of Fish and Game, U.S. Fish and Wildlife Service, and
Grassland Water District

1. Provide agreed to contract language in redline/strikeout format before the next tentative negotiation date of July 21, 2000 or August 9, 2000.
2. Provide proposed language as listed in the above.